

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.422 Definitions.

Sec. 2. As used in this act:

(a) "Cigarette" means a roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

(b) "Cigarette making machine" means any machine or other mechanical device which meets all of the following criteria:

(i) Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes, including, but not limited to, cigarette filters.

(ii) Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes.

(iii) Is commercial-grade or otherwise designed or suitable for commercial use.

(iv) Is designed to be powered or otherwise operated by a main or primary power source other than human power.

(c) "Commissioner" means the state treasurer.

(d) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

(e) "Counterfeit cigarette paper" means a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

(f) "Counterfeit stamp" means any stamp, label, or print, indicium, or character, that evidences, or purports to evidence, the payment of any tax levied under this act and that has not been printed, manufactured, or made by authority of the department as provided in this act and has not been issued, sold, or circulated by the department.

(g) "Department" means the department of treasury.

(h) "Financially sound" means a determination by the department that the wholesaler or unclassified acquirer is able to pay for its stamps in the ordinary course of business based on criteria including, but not limited to, all of the following:

(i) Past filing and payment history with the department.

(ii) Outstanding liabilities.

(iii) Review of current financial statements including, but not limited to, balance sheets and income statements.

(iv) Duration that the wholesaler or unclassified acquirer has been licensed under this act.

(i) "Gray market cigarette" means any cigarette the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

(j) "Gray market cigarette paper" means any cigarette paper the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in _____ (another country) Only", or similar wording.

(k) "Individual package" means an individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

(l) "Licensee" means a person licensed under this act.

(m) "Manufacturer" means any of the following:

(i) A person who manufactures or produces a tobacco product.

(ii) A person who operates or who permits any other person to operate a cigarette making machine in this state for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person who is a manufacturer under this subparagraph shall constitute a nonparticipating manufacturer for purposes of sections 6c and 6d. A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes shall not be considered a manufacturer as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. For purposes of this act, "self-consumption" means

production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

(n) "Noncigarette smoking tobacco" means tobacco sold in loose or bulk form that is intended for consumption by smoking and includes roll-your-own cigarette tobacco.

(o) "Person" means an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity.

(p) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.

(q) "Retailer" means a person other than a transportation company who operates a place of business for the purpose of making sales of a tobacco product at retail.

(r) "Sale" means a transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

(s) "Secondary wholesaler" means a person who sells a tobacco product for resale, who purchases a tobacco product from a wholesaler or unclassified acquirer licensed under this act, and who maintains an established place of business in this state where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale, and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale.

(t) "Smokeless tobacco" means snuff, chewing tobacco, and any other tobacco that is intended to be consumed by means other than smoking.

(u) "Stamp" means a distinctive character, indication, or mark, as determined by the department, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by the department to indicate that the tax imposed under this act has been paid.

(v) "Stamping agent" means a wholesaler or unclassified acquirer other than a manufacturer who is licensed and authorized by the department to affix stamps to individual packages of cigarettes on behalf of themselves and other wholesalers or unclassified acquirers other than manufacturers.

(w) "Tobacco product" means cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.

(x) "Transportation company" means a person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(y) "Transporter" means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act. Transporter does not include an interstate commerce carrier licensed by the interstate commerce commission to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under this act.

(z) "Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution. Unclassified acquirer also means a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer does not include a wholesaler.

(aa) "Vending machine operator" means a person who operates 1 or more vending machines for the sale of a tobacco product and who purchases a tobacco product from a manufacturer, licensed wholesaler, or secondary wholesaler.

(bb) "Wholesale price" means the actual price paid for a tobacco product, including any tax, by a wholesaler or unclassified acquirer to a manufacturer, excluding any discounts or reductions.

(cc) "Wholesaler" means a person who purchases all or part of his or her tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, and who maintains an established business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2005, Act 238, Eff. Jan. 1, 2006;—Am. 2012, Act 188, Imd. Eff. June 20, 2012.